IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No. 39 of 2006
In
COMPANY PETITION No. 59 of 2005
with
O.J.Civil Application no.167 of 2006

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NILA BAURAT ENGINEERING LTD. - Appellant(s)

Versus

GRAPHITE INDIA LTD. - Opponent(s)

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Appearance :
MR Mihir Thakore, Sr.Advocate with KM PARIKH for Appellant(s) : 1,
Mr. Rushesh Parikh for Opponent(s) : 1,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 02/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1. The appellant has filed this appeal against the order dated 10-4-2006 passed by the learned Company Judge in Company Petition no.59/2005 whereby he has admitted the Company Petition and ordered publication of the advertisement in two local newspapers without assigning any reasons.

2. On 17-4-2006 another Division Bench of this Court after hearing the learned Counsel for the appellant and the respondent appearing on caveat admitted this appeal and it was ordered that the learned Company Judge may not pass any final order in the matter till the final decision of this appeal. Accordingly, the final order was not passed by the learned Company Judge. However, as per the order of the learned Company Judge advertisement is already published in two local newspapers " Indian Express" (English) and "Sandesh" (Gujarati.

3. Sr. Advocate Shri Mihir Thakore for the appellant submitted that the order of admission dated 10-4-2006 passed by the learned Company Judge admitting the Company Petition and ordering publication of the advertisement in two local newspapers and fixing the date for final disposal on 19th June, 2006 was not a speaking order, therefore, the same has to be quashed and set aside, as while admitting the appeal, the learned Company Judge has not assigned any reasons. In support of his submission Mr. Thakore has relied on the judgment of the Honourable Supreme Court rendered in the case of **Pradeshiya Industrial and Investment Corporation of U.P. v. North India Petrochemical Ltd.[1994] 79 Company Cases 835.** He has also relied on the case of **Airwings Private Ltd. v.Viktoria Air Cargo Gmbh [1995] 84 Company Cases 688.**

4. Mr. Parikh for the respondent conceded that the order passed by the learned Company Judge was not a speaking order, however, he submitted that after hearing both the learned Counsel for the parties for

a considerable long time, the learned Company Judge admitted the Company Petition and ordered publication of advertisement but without assigning any reasons as the learned Company Judge was of the opinion that if any reasons were assigned for the admission of the Company Petition, then it may create complications in the matter or cause an unpleasant situation in future. He, therefore, submitted that this Court should dismiss the appeal.

5. It is true that the learned Company Judge himself as stated in his order of admission ".....I am not detailing the reasons, nor I am giving specific findings on the arguments raised by the parties to avoid any unpleasant situation in future or create complications in the matter, because any findings, recorded at this stage, may come against either of the parties." However, the fact remains that no reasons have been assigned by the learned Company Judge while admitting the Company Petition. The point is squarely covered by the aforesaid two decisions of the Honourable Supreme Court and Karnatakka High Court in 79 Company Cases 835 and 84

Company Cases 688 respectively wherein it is held that while admitting the Company Petition the Court must assign reasons. Admittedly, no reasonswere assigned by the learned Company Judge while admitting the Company Petition. Therefore, the order of admission dated 10-4-2006 is required to be quashed and set aside.

6. In view of the above discussion, this appeal is allowed and the order dated 10-4-2006 passed by the learned Company Judge in Company Petition no.59/2005 admitting the Company Petition and ordering publication of advertisement in two local newspapers and fixing the date for final disposal is hereby quashed and set aside. Once the order is set aside, the matter is required to be remitted, and accordingly, the Company Petition is remitted to the learned Company Judge for passing appropriate orders in accordance with law including the order of admission of the Company Petition, but with reasons after hearing the learned Counsel for the parties if he is satisfied that the petition requires admission.

7. As the main appeal is allowed, no further order is required to be passed on Civil Application. Accordingly, it is disposed of. Interim relief granted earlier in the matter stands vacated forthwith.

(B.J.Shethna,J.)

(M.D.Shah,J.)

bjs-lee